IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Niwas. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 948/2005 against the order dated 23-8-2005 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act Case, Merta, in Criminal Revision No. 08/2005.

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Date of Order: December 22, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. G.R. Punia, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. D.K. Gaur, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 22-8-2005 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Merta (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 08/2005, whereby the revision petition filed by the petitioner against the order dated 18-7-2005 passed by the Sub-Divisional Magistrate, Degana, district Nagaur (for short, "the Executive Magistrate" hereinafter) was dismissed.

By the order dated 18-7-2005, the Executive Magistrate, in the proceedings under Sections 133 and 142 of the Code, directed to remove the obstructions from the public way and the Naib Tehsildar, Sanju, district Nagaur, was directed to remove the obstruction from the public way and if needed, with the help of the police. That order came to be challenged before the Revisional Court and the Revisional Court, by a well-reasoned and elaborate order, finding no error in the order of the Executive Magistrate, dismissed the revision petition. Hence this criminal miscellaneous petition.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the Executive Magistrate as also the Revisional Court and the record of the Court of the Executive Magistrate.

It is contended by the learned counsel for the petitioner that though the petitioner has dumped the heap of manure on the way which is adjacent to his house but such dumping of heap of manure would not amount to public nuisance and, therefore, both the Courts below fell in error in directing to remove the obstruction from the public way. It was further contended that by dumping the heap of manure on the public way, it cannot be said that it has caused imminent danger and, therefore, in absence of there being a finding of imminent danger, recourse to Section 142 of the Code cannot be taken.

Learned counsel has relied on the decisions of this Court in Darwara Singh Vs. The State of Rajasthan & ors., 1991 Cr.L.R. (Raj.) 454; Suresh Kumar & ors. Vs. State of Rajasthan & ors., 1998-99 (Suppl) Cr.L.R. (Raj.) 152; and Khetu Dan Vs. State of Rajasthan & ors., 1999 Cr.L.R. (Raj.) 431.

Learned counsel for the non-petitioner No.2 submits that even the petitioner himself has not disputed that the heap of manure etc. have been dumped by him on the public way and since it has been admitted by the petitioner himself that he has dumped the manure on the public way, which is evident from the record that such dumping is on a large scale obstructing the public way, therefore, there is a strong evidence available on record that the petitioner caused public nuisance by obstructing the public way which is in the use by the public at large and, therefore, the Executive Magistrate as also the Revisional Court were justified in passing the orders impugned.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

The complaint was filed by the non-petitioner No.2 before the Executive Magistrate. The Executive Magistrate sent the complaint to the police for inquiry. On inquiry, the police inspected the site, prepared the site map and site inspection note and after thorough inquiry, filed the complaint under Section 133 of the Code before the Executive Magistrate stating

therein that there is a pubic way which is being used by the public at large as the way, which has been obstructed by the petitioner by dumping eight to ten tractor-trolly load of manure and blocked the way, causing injuries to the public health and comfort of the village community. It has also been mentioned that by obstructing and blocking the public way by dumping the heap of manure about eight to ten load of tractor-trolly, the public way has been obstructed.

The Executive Magistrate, on the basis of the material before it, including the affidavits filed by the non-petitioner No.2 and as many as twenty-three persons, the reply filed by the petitioner along with the photographs, prima facie came to the conclusion that the place where the heap of manure has been dumped by the petitioners, has obstructed the public way which was constructed by the government fund as is evident from the documents filed by the non-petitioner No.2 in this regard showing that the expenses for constructing the public way were borne by the State Government, and finding that the matter of imminent danger and to prevent the imminent danger or injury of serious kind to the public in general, immediate measures are warranted under the law, directed to remove the obstruction from the public way in order to prevent the breach of peace and public injury and also directed the Naib Tehsildar of the area to remove the obstruction from the public way, if

needed, with the aid of the police.

From the material on record, it is not disputed that there is a public way from Sanju to Ren and the said way is adjacent to the house of the petitioner. The petitioner's house is on the road side having boundaries thereof. The original way was 40 feet in width but by dumping the heap of manure by the petitioner, the public way has been obstructed and blocked. It is not the case of the petitioner that the place where he has dumped the heap of manure is not a public way. The petitioner himself admitted that it is a public way and he has dumped the heap of manure but his case is that the way has not been completely blocked. Whether or not the way has completely been blocked or not, but the public way has been blocked leaving a very small place for the use of general public and, therefore, in my view, the petitioner has caused obstruction on the public way by dumping the heap of manure, which amounts to public nuisance causing injury and uncomfort to the public in general in using the way.

So far as question of prevention of imminent danger or public injury of serious kind is concerned, both the Courts below concurrently found that by obstructing the public way largely by dumping the heap of manure about eight to ten tractor-trolly load, establishes that the removal of obstruction was necessary to prevent imminent danger and injury of serious

kind to the public in general and for which an order of injunction, as envisaged under Section 142 of the Code is fully justified.

It is not in dispute that the public has an access to the public way by right to use it and, therefore, it is a a public way and the removal of obstruction ordered by the Executive Magistrate and affirmed by the Revisional Court, in any manner, cannot be said to be contrary to the provisions of law.

The decisions cited by the learned counsel for the petitioner turn on their own facts and are of no help to the petitioner.

The object and purpose behind provisions of Section 133 of the Code are essentially to prevent public nuisance urgently and if immediate measures to remove the obstruction in order to prevent imminent danger and injury of serious kind to the general public are not taken, the irreparable damage would be caused to the public in general.

Since both the Courts below concurrently found that the petitioner obstructed the public way and caused nuisance by dumping the heap of manure, in my view, the concurrent findings arrived at by the Courts below cannot be said to be erroneous in any manner warranting interference in the inherent jurisdiction. It is settled law that the power under Section 482 of the Code are to be exercised sparingly, cautiously and in exceptional cases where it is made out that the non-interference

would result in serious miscarriage of justice. In the instant case, it cannot be said that the orders impugned would result in serious miscarriage of justice. On the contrary, in my view, the orders impugned are just and proper, in the facts and circumstances of the case, to secure the ends of justice.

In this view of the matter, I do not find any merit in the criminal miscellaneous petition and it is dismissed accordingly. The stay petition also stands dismissed.

(H.R. PANWAR), J.

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